compensation rate if a new contract is approved by the board of directors of the investment company and if neither the investment adviser nor a controlling person thereof directly or indirectly receives money or other benefit in connection with the assignment. Applicants cannot rely on rule 15a–4 because of the benefits to the CF shareholders arising from the Merger.

4. Applicants state that a proxy solicitation to the shareholders of the Fund is a complicated and time consuming task. The task will include the preparation, clearance, and mailing of proxy materials, and the solicitation efforts required to obtain the requisite votes. Because of the complexity of the proxy solicitation and the imposition of a confidentiality requirement that prevented CF from contacting the Fund and the Adviser in advance of the Merger, applicants state that it was not possible for the Fund to obtain shareholder approval of the New Sub-Advisory Agreement in accordance with section 15(a) of the Act prior to the Effective Date.

5. Applicants submit that the requested relief would permit CF to provide continuity of investment management to the Portfolio during the Interim Period without a disruption of advisory services. In addition, the requested relief would also preserve the profitability of CF during the Interim Period by ensuring that investment advisory fees will continue to accrue to it from the Portfolio, subject to shareholder approval. These fees are an important part of CF's total revenue and are important to maintaining its ability to provide services to the Portfolio.

6. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the pubic interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by this application that:

1. The New Sub-Advisory Agreement will have the same terms and conditions as the Existing Sub-Advisory Agreement, except for the effective and termination dates, the introduction of fee break points and the elimination of a provision providing for fee waivers by CF when the Portfolio was in a start-up mode.

2. Fees earned by CF and paid by the Adviser during the Interim Period in accordance with the New Sub-Advisory Agreement will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid to CF only after the requisite shareholder approval is obtained, or in the event such approval is not obtained, to the Portfolio.

3. The Fund will hold a meeting of its shareholders to vote on the approval of the New Sub-Advisory Agreement on or before the 120th day following the termination of the Existing Sub-Advisory Agreement on the Effective Date (but in no event later than December 31, 1996).

4. CF and/or UAM will pay the costs of preparing and filing this application. CF and/or UAM will pay the costs relating to the solicitation of the Fund shareholder approval, to the extent such costs relate to approval of the New Sub-Advisory Agreement necessitated by the Merger.

5. CF will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Portfolio under the New Sub-Advisory Agreement will be at least equivalent, in the judgment of the Fund's Board, including a majority of the Independent Directors, to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the New Sub-Advisory Agreement caused by the Merger, CF will apprise and consult with the Board of the Fund to assure that the Board, including a majority of the Independent Directors members, is satisfied that the services provided by CF will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23120 Filed 9–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 22197; 812–10312]

Lincoln National International Fund, Inc., et al.; Notice of Application

September 4, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Lincoln National International Fund, Inc. (the ''Fund''), Lincoln Investment Management, Inc. (the ''Adviser''), and Clay Finlay Inc. (''CF'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: The order would permit the implementation, without shareholder approval, of a new sub-advisory contract for a period of up to 120 days following the date of the change in control of CF, a sub-adviser to the Fund (but in no event later than December 31, 1996). The order also would permit CF to receive from the Fund fees earned under the new sub-advisory contract following approval by the Fund's shareholders.

FILING DATE: The application was filed on August 22, 1996. Applicants have agreed to file and amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 30, 1996 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: the Fund and the Adviser, 1300 South Clinton Street, Fort Wayne, Indiana 46803; and CF, 200 Park Avenue, New York, New York 10166.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulations).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is an open-end, management investment company registered under the Act. The Adviser, a registered investment adviser under

the Investment Advisers Act of 1940 (the ''Advisers Act''), serves as the investment adviser to the Fund pursuant to an advisory agreement with the Fund. CF, also a registered investment adviser under the Advisers Act, provides sub-advisory services to the Fund pursuant to a sub-advisory agreement (the ''Existing Sub-Advisory Agreement'') among CF, the Adviser, and the Fund.

2. On July 17, 1996, CF and United Asset Management (''UAM'') entered into an agreement pursuant to which a wholly-owned subsidiary of UAM will be merged with and into CF (the Merger''), with CF to be the survivor and a wholly-owned subsidiary of UAM. Pursuant to the Merger, shares of CF's common stock will be exchanged for shares of UAM's common stock.

3. The parties to the Merger anticipate that the Merger will be consummated by August 29, 1996 (the ''Effective Date''). Upon consummation of the Merger, 100% of the outstanding voting securities of CF will be owned by UAM and CF will become a wholly-owned subsidiary of UAM. Thus, the Merger will result in a change of control of CF. Accordingly, the change of control will result in the assignment of the Existing Sub-Advisory Agreement and the termination of such agreement according to its terms.

4. Applicants seek an exemption to permit the implementation, without shareholder approval, of a new sub-advisory agreement (the ''New Sub-Advisory Agreement'') to be entered into by the Fund, the Adviser, and CF. The requested exemption would cover an interim period of not more than 120 days (the ''Interim Period'') beginning on the Effective Date and continuing through the date the new sub-advisory agreement is approved or disapproved by the Fund's shareholders (but in no event later than December 31, 1996). During the Interim period, that portion of the advisory fees paid by the Adviser to CF for sub-advisory services would be paid into an escrow account.

5. The New Sub-Advisory Agreement is identical to the Existing Sub-Advisory Agreement, except for the effective date and escrow provisions. The fee levels for sub-advisory services will remain the same as in the Existing Sub-Advisory Agreement.

6. In accordance with section 15(c) of the Act,[1] the board of directors (the ''Board'') of the Fund met on August 13, 1996 and determined that the New Sub-Advisory Agreement would be in the best interests of the Fund and its shareholders. At this meeting, the Board, including a majority of the disinterested directors (the ''Independent Directors''), voted to approve the New Sub-Advisory Agreement.

7. Applicants propose to enter into an escrow arrangement that would provide that: (a) the fees payable to CF during the Interim Period under the New Sub-Advisory Agreement would be paid into an interest-bearing escrow account maintained by an escrow agent; (b) the amounts in the escrow account (including interest earned on such paid fees) would be paid to CF only upon approval of the Fund's shareholders of the New Sub-Advisory Agreement or, in the absence of such approval, to the Fund; and (c) the escrow agent would release the monies to CF only upon approval of the New Sub-Advisory Agreement by the Fund's shareholders in accordance with section 15 of the Act or to the Fund if the Interim Period has ended and the New Sub-Advisory Agreement has not received the requisite shareholder approval. Before any such release is made, the Board would be notified.

Applicant's Legal Analysis

1. Applicants request an order pursuant to section 6(c), exempting them from section 15(a) of the Act, to the extent necessary (i) to permit the implementation during the Interim Period, without prior shareholder approval, of the New Sub-Advisory Agreement and (ii) to permit CF to receive from the Adviser upon approval by the Fund's shareholders any and all fees earned under the New Sub-Advisory Agreement implemented during the Interim Period.

2. Section 15(a) of the Act prohibits an investment adviser from providing investment advisory services to an investment company except under a written contract that has been approved by a majority of the securities of the investment company. Section 15(a) further requires that the written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company. Upon consummation of the Merger, CF will become a wholly-owned subsidiary of UAM. Applicants state that the Merger therefore will result in an ''assignment'' of the Existing Sub-Advisory Agreement within the meaning of section 2(a)(4), terminating such agreement according to its terms.

3. Rule 15a–4 provides, in relevant part, that if an investment adviser's investment advisory contract with an investment company is terminated by assignment, the adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company and if neither the investment adviser nor a controlling person thereof directly or indirectly receives money or other benefit in connection with the assignment. Applicants cannot rely on rule 15a–4 because of the benefits to the CF shareholders arising from the Merger.

4. Applicants state that a proxy solicitation to the shareholders of the Fund is a complicated and time consuming task. The task will include the preparation, clearance, and mailing of proxy materials, and the solicitation efforts required to obtain the requisite votes. Because of the complexity of the proxy solicitation and the imposition of the confidentiality requirement that prevented CF from contacting the Fund and the Adviser in advance of the Merger, applicants state that it was not possible for the Fund to obtain shareholder approval of the New-Sub Advisory Agreement in accordance with section 15(a) of the Act prior to the Effective Date.

5. Applicants submit that the requested relief would permit CF to provide continuity of investment management to the Portfolio during the Interim Period without a disruption of advisory services. In addition, the requested relief would also preserve the profitability of CF during the Interim Period by ensuring that investment advisory fees will continue to accrue to it from the Portfolio, subject to shareholder approval. These fees are an important part of CF's total revenue and are important to maintaining its ability to provide services to the Portfolios.

6. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of

[1] Section 15(c) provides, in relevant part, that it shall be unlawful for any registered investment company to enter into an investment advisory contract unless the terms of such contract have been approved by the vote of a majority of directors, who are not parties to such contract or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval.

the Act. For the reasons stated above, applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by this application that:

1. The New Sub-Advisory Agreement will have the same terms and conditions as the Existing Sub-Advisory Agreement, except for the effective and termination dates.

2. Fees earned by CF and paid by the Fund during the Interim Period in accordance with the New Sub-Advisory Agreement will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid to CF only after the requisite shareholder approval is obtained, or in the event such approval is not obtained, to the Fund.

3. The Fund will hold a meeting of its shareholders to vote on the approval of the New Sub-Advisory Agreement on or before the 120th day following the termination of the Existing Sub-Advisory Agreement on the Effective Date (but in no event later than December 31, 1996).

4. CF and/or UAM will pay the costs of preparing and filing this application. CF and/or UAM will pay the costs relating to the solicitation of the Fund shareholder approval, to the extent such costs relate to approval of the New Sub-Advisory Agreement necessitated by the Merger.

5. CF will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Fund under the New Sub-Advisory Agreement will be at least equivalent, in the judgment of the Fund's Board, including a majority of the Independent Directors, to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the New Sub-Advisory Agreement caused by the Merger, CF will apprise and consult with the Board of the Fund to assure that the Board, including a majority of the Independent Directors members, is satisfied that the services provided by CF will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23121 Filed 9–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37633; File No. SR–CBOE–96–36]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Deactivation of RAES During Unusual Market Activity

September 4, 1996.

I. Introduction

On June 12, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to allow the interruption of the Exchange's Retail Automatic Execution System (''RAES'') due to unusual market activity. The proposed rule change was published for comment and appeared in the Federal Register on July 3, 1996.[3] No comments were received regarding the proposal. This order approves the Exchange's proposal.

II. Description of the Proposal

The Exchange proposes to add a new paragraph (e) to CBOE Rule 6.6 that will authorize Order Book Officials (''OBOs'') and, in the case of options traded at Designated Primary Market Maker (''DPM'') stations, Post Directors to deactivate RAES for a period not to exceed five minutes in specified classes of options traded at the posts where such persons are stationed when in their judgement such action is warranted by an influx of orders or other unusual market conditions in such options or their underlying securities and the OBO or Post Director determines that such action is appropriate in the interests of maintaining a fair and orderly market. Whenever such action is taken, notice thereof shall immediately be given to two Floor Officials who may continue the deactivation of RAES, provided that the necessary conditions provided for in Rule 6.6 have been met.[4]

The Exchange believes that this proposed rule change should allow a more immediate response to temporary order imbalances related to market disruptions in stocks that underlie options traded on CBOE caused by certain events, such as significant news announcements. The Exchange believes that in these situations stock prices may move sharply, and Exchange market-makers may not have time to adjust their options quotes in the numerous series of options that overlie these stocks. The Exchange notes that this may result in published options quotes that do not reflect current stock prices. Because orders sent to RAES are executed automatically at published quotations, the Exchange believes that customers may receive executions at stale prices, which may be more favorable, or less favorable, than fair market price.

Exchange Rule 6.6 currently authorizes two Floor Officials to respond to this situation by declaring the market in particular classes of options to be ''fast,'' and then turning off RAES (and taking other action) until there has been time for prices to be adjusted. The Exchange believes that because of the speed with which computerized order routing systems can direct orders to RAES, and because RAES itself provides for instantaneous automatic executions, there can be a significant number of executions at prices that do not reflect the current state of the market during the several minutes that it could take for two Floor Officials to declare a fast market. The Exchange believes that by authorizing OBOs and Post Directors to turn off RAES for up to five minutes during unusual market activity, the response time to such a situation will be considerably shortened, and the number of executions at inaccurate prices should be reduced accordingly. Currently, Post Directors or OBOs are authorized to suspend trading in specific classes of options for up to five minutes when there is a trading halt of suspension of trading in the underlying security in the primary market pursuant to CBOE Rule 6.3. The Exchange notes that the OBOs and Post Directors, in those situations, are able to deal quickly and on an interim basis when an immediate response is necessary, pending further consideration of the matter by two Floor Officials.

The Exchange anticipates that in most instances where RAES is deactivated by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37364 (June 25, 1996), 61 FR 34911.

[4] The Exchange represents that two Floor Officials will promptly exercise their authority under Rule 6.6 once notified of the RAES deactivation by the OBO or Post Director. The proposal also provides that the two Floor Officials will make all further determinations pursuant to Rule 6.6 regarding the particular options class once they arrive at the particular trading post, but until such time the OBO or Post Director can reactivate RAES if they determine such action is in the interest of a fair and orderly market. Telephone conversation between Michael Meyer, Schiff Hardin & Waite, and John Ayanian, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on August 27, 1996.